



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number: **201237021**  
Release Date: 9/14/2012  
Date: 6/19/2012  
UIL Code: 501.06-00a

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:  
1120

Tax Years:  
All

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)  
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter

Letter 4040 (CG) (11-2005)  
Catalog Number 47635Z



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: April 16, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #:

501.06-01

X = Name

F = LLC

B = Date

S = State

T = Date

P = Industry

D = Database

G = Database

L = Database

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

Issue

Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons described below.

Facts

Your founder, X is also the founder of F, which was formed as an LLC in the state of S on T. F's organizing document shows X as its only member. Furthermore, your secretary/ treasurer is F's registered agent. F is a for profit business offering equipment and P industry consulting services. You will negotiate a management agreement with F at or below market rates. Your budget shows 67% of expenses are for management fees paid to F.

You were formed on B in the state of S which is about 60 days after F's formation. Your Articles

of Incorporation have no stated purpose. You are also not a membership organization.

Your bylaws state:

- You will supply and procure P, P fixtures, and P technology in support of global development.
- Consistent with U.S. governmental policy, you will disseminate information and provide referrals within the P industry to U.S. Government agencies, international business communities, and host country project clients.
- You will provide comprehensive and strategically integrated networking, multi-level information access, and professional services for the benefit of other member organizations of the Consortium for International Development, U.S. Government agency programs, and the U.S. and host country business communities.
- You will contribute to job creation within the P industry within both the U.S. and host country client communities, especially with women and minority-owned business enterprises.

Once you receive income tax exemption, you will apply to the United States Agency for International Development (USAID) to become a Private Voluntary Organization (PVO) and will represent the P industry sector and promote this industry throughout the world. You will refer companies within the P industry to L. L is a developing database of all companies within the United States who are interested in participating in domestic and international projects funded by government and non-government organizations. By joining the free database, a business can be matched to development projects worldwide. You have no relationship with the L. D and G are a vetting process within L to determine which companies are qualified to work on the domestic and international projects. Many look to the D and G for their contract needs.

When the business you refer is selected to supply goods or services by any funding agency, you will be paid a facilitators fee for all P purchased. The facilitator's fee is determined by the funding agency based on each specific project. Facilitation fees can only be paid to a non profit organization.

You will also offer professional specification input on international potential projects that involve the P industry. In this case, you will travel to the country where the project has been identified in order to evaluate the specifications of a project as it pertains to the elements of the P industry. This trip will also lead to a referral to an industry supplier of P technologies.

You will advertise your services by becoming a member the P Industry Trade Association and plan to attend trade shows to meet people in the P industry.

You have four board members including X as your president.

Finally, you did not provide information that we requested. For example, you

- Did not provide a copy of the grant application for the USAID (United States Agency for International Development) nor did you submit the specific requirements for the grant.
- Did not provide the names of the members or the owners of E. You wrote that E has no members and that your founder is a minority board member even though E's organizing document lists X as its member.

- Did not provide a copy of the contract or a description of the contract terms with F as well as how the management fees will be determined. The management fees however are estimated at over \$30,000 per month.
- Did not state the gross income of F without the potential contract from you.

### Law

Section 501(c)(6) of the Internal Revenue Code of 1986 provides exemption from federal income tax for business leagues not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulation states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Revenue Ruling 56-65, 1956-1 C.B. 199 denied exemption to a local organization whose principal activity consisted of furnishing particular information and specialized individual service to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses. These services are but not limited to; promoting efficiency among members by producing a publication that provides a list of specific projects from whom bids and quotations may be obtained by members. In addition, a labor committee is maintained within the organization to settle labor disputes for members.

Revenue Ruling 61-170, 1961-2 C.B. 112 held that an organization formed and operated primarily as an employment agency for the benefit of members is engaged in a regular business of a kind ordinarily carried on for profit and is rendering particular services for individual members; and thus, activities of this nature preclude exemption under 501(c)(6) of the Code.

Revenue Ruling 76-409, 1976-2 C.B. 154 denied exemption to an organization whose principal activity is the publication and distribution of an annual directory consisting almost entirely of members' names, addresses, and telephone numbers. The directory is distributed free to those members of the business community who are likely to require the services of the profession. It was held, the publication and distribution of a directory containing the names and addresses of members constitutes advertising for individuals, and therefore, is the performance of particular services to members rather than an activity aimed at the improvement of general business conditions.

In Apartment Operations Ass'n v. Commissioner of Internal Revenue, 136 F. 2d 435 (1943), the court denied exemption as a business league. The organization was an apartment owners' association, which regularly carried on a business of a kind ordinarily, conducted for profit and performed particular services for individual persons. These services consisted of acting as a clearing house for information about tenants, including the operation of apartment houses, and about the legislation affecting the business; gave council and advice to its members and did

what it could to promote their welfare; secured information about prices for necessary goods for the apartments; and represented its members in labor disputes and negotiations. The Court held the organization's primary activity was one of a business regularly carried on for profit.

#### Application of Law:

You are not described in IRC 501(c)(6) because you operate similar to a for profit business by providing referral services to businesses in the P industry. Moreover, your net earnings are inuring to X through your relationship with E.

You are not described in Section 1.501(c)(6)-1 of the Income Tax Regulation because the facts show you are not operating to promote the common business interests of a particular industry or trade, but rather you are engaging in a regular business of the kind ordinarily carried on for profit. You are referring businesses involved in the P industry to L in order for them to find projects. If a referred business is awarded a contract for a job, you are paid a facilitation fee. Although you wrote the fee is for you to be self-sustaining, this does not change the fact you are operating a business.

Like the organization in Revenue Ruling 56-65 you are providing a particular service to businesses by making referrals to L for them to locate specific projects offered by U.S. government agencies, international business communities and host country project clients. For successful referrals, you will be paid a facilitation fee. This is similar to a business that is ordinarily carried on for profit.

You are like the organizations in Revenue Ruling 61-170 and Revenue Ruling 76-409 since you are providing business opportunities for businesses within the P industry. You refer clients to L in order for them to secure beneficial business deals. If a contract is accepted, you are paid a fee. You are operating a business ordinarily carried on for profit.

You are like the organization in Apartment Operations Ass'n v. Commissioner of Internal Revenue, 136 F. 2d 435. You have stated you provide professional services for the benefit of other member organizations of the Consortium for International Development, U.S. Government agency programs, and the U.S. and host country business communities. These services are those of a business ordinarily carried on for profit and render particular services for individuals rather than promoting the general business conditions of the industry as a whole.

You have not met the requirements of Revenue Procedure 2011-9 because you did not provide information we asked after repeated requests. For instance, you:

- Did not submit specific requirements for the grant from the USAID nor provide a copy of the grant application for USAID.
- Did not provide a complete list of the members or owners of E.
- Did not provide a copy of the contract or contract terms with E. In addition, you did not describe how the management contract fees with E will be determined except that these fees will be at or below market rate.
- Did not state the gross income of E without the potential contract from M.

#### Applicant's Position

Your position is that you believe you qualify for exemption under Section 501(c)(6) of the

Internal Revenue Code of 1986 and that you have provided the necessary information.

Our Response to Applicant's Position:

You failed to provide any additional information from which it can be concluded that you are primarily organized and operated in accordance with section 501(c)(6).

Conclusion:

Your activities are not directed to the improvement of business conditions of one or more lines of businesses, or any other purpose defined in section 501(c)(6). You are providing referral services to those in the P industry for a fee. Even though the fees enable you to be self-sustaining, you are operating a business of a kind ordinarily carried on for profit. Although you did not provide details concerning the contractual relationship with E, based on the submitted information, your net earnings are inuring to X through the relationship with E.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included



stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois Lerner  
Director, Exempt Organizations

Enclosure, Publication 892